

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

MARK STAAKE,

Plaintiff,

v.

No. 19-cv-861-MV-KBM

DAVID JABLONSKI, *et al*,

Defendants.

ORDER DIRECTING RESPONSE REGARDING DUPLICATE CLAIM

This matter is before the Court on Plaintiff Mark Staake's Prisoner Civil Rights Complaint (Doc. 1) (the "Complaint"). In the Complaint, Plaintiff alleges, inter alia, that defendants were deliberately indifferent to his serious medical needs after he was injured when a cable on the exercise machine that he was using snapped, causing him to fall backwards onto a concrete floor. Plaintiff raised near-identical claims in a state court action filed in 2018, which was removed to this Court in 2019. *See Staake v. Jablonski, et al.*, Case No. 19-cv-1193-RB-GJF. The complaint in Case No. 19-cv-1193-RB-GJF survived initial review and will be resolved on a full record and after a *Martinez* investigation. *Id.* at Doc. 22. It is unclear whether Plaintiff still intends to pursue the claims raised in the above-captioned case, which are essentially duplicative of those in Case No. 19-cv-1193-RB-GJF.

In this case, the Court granted Plaintiff leave to proceed *In Forma Pauperis*, reducing the filing fee to \$350, which Plaintiff was required to pay in monthly installments of 20% of his income after an initial partial payment of \$32.49. (Doc. 10). Plaintiff paid the initial partial payment in February 2020. (Doc. 11). Thereafter, Plaintiff made monthly installment payments totaling \$39.62, the last of which was submitted in March 2021. (Doc. 15, 17, 19, 21, 23, 26, 30). In

September 2021, the Court entered Order Granting Motions for Time Extension, allowing Plaintiff to forgo monthly payments in any month that his previous month's account balance was \$10 or less due to COVID-19 restrictions affecting his income. (Doc. 32). In February 2022, Plaintiff notified the Court of a changed in his address resulting from his release from prison on February 28, 2022. (Doc. 33). Though his circumstances have changed since the September 2021, Plaintiff has not indicated whether, and if so how, he intends to pay the \$277.89 filing fee balance.

If Plaintiff wishes to prosecute this case, he must file a notice to that effect within thirty (30) days of entry of this Order. Plaintiff is advised that he may be required to pay the \$277.89 filing fee balance if he proceeds in this matter. If Plaintiff intends only to pursue the duplicate claims in Case No. 19-cv-1193-RB-GJF, he does not need to take any further action in this case.

IT IS ORDERED that if Plaintiff still wishes to pursue this case, he shall file a written notice to that effect within thirty (30) days of entry of this Order. If Plaintiff does not file a written response by the deadline, this case will be dismissed without prejudice. Such dismissal will not impact the litigation in Case No. 19-cv-1193-RB-GJF.


UNITED STATES MAGISTRATE JUDGE